

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FRANK GILBERT,

Plaintiff,

vs.

Civil Action 2:06-CV-749
Judge Smith
Magistrate Judge King

STATE OF OHIO, MIAMI COUNTY,

Defendant.

REPORT AND RECOMMENDATION

Plaintiff, a state inmate, brings this action under 42 U.S.C. §1983, seeking monetary damages against Miami County, Ohio, for false imprisonment "for not reviewing the evidence which was given by the rape kit. ..." *Complaint*. It appears that, by this action, plaintiff seeks to challenge the basis of his current confinement. This matter is now before the Court for the initial screen of the complaint required by 28 U.S.C. §§1915(e), 1915A.

The United States Supreme Court has held that a federal court is without authority to entertain a civil rights action under §1983 if to do so would necessarily undermine the validity of a criminal conviction. *Heck v. Humphrey*, 512 U.S. 477 (1994). A state criminal conviction may be challenged in federal court only in the context of a habeas corpus action. See 28 U.S.C. §2254. Unless and until plaintiff can demonstrate that the conviction that he seeks to challenge in this action has been vacated or set aside, the Court is without jurisdiction to entertain the claim presented in this action.

It is therefore **RECOMMENDED** that this action be **DISMISSED** for lack of jurisdiction.

If any party seeks review by the District Judge of this Report

and Recommendation, that party may, within ten (10) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1); F.R. Civ. P. 72(b). Response to objections must be filed within ten (10) days after being served with a copy thereof. F.R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Federation of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

October 2, 2006

s/Norah McCann King
Norah McCann King
United States Magistrate Judge